*** THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY**

–

AND

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*** THE HON'BLE SRI JUSTICE C.V. RAMULU**

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+ W.P. No.26282 OF 2004

% Dated 18-01-2005

M. Anandamma & 9 Others

…. Petitioners

Vs.

$ The Revenue Divisional Officer/Presiding Officer,

Kurnool, Kurnool District & 5 others

…. Respondents/Respondents

! Counsel for the Petitioners: Sri. E. Ayyapu Reddy

^ Counsel for Respondents.1 & 2: Advocate General

^ Counsel for Respondent No.3: Sri C.V. Mohan Reddy.

^ Counsel for Respondents 4 to 6: Sri N. Subba Reddy

< GIST:

> HEAD NOTE:

? Cases referred

1) 2002(6) ALT 18 (DB)

2) 2004(2) ALD 261 (DB)

3) (2002) 8 SCC 237

4) (2003) 6 SCC 401

5) 2002(1) ALD 398 (DB)

6) 1998(5) ALT 323 (DB).

C/15

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P. No.26282 of 2003

Between:

1 M. Anandamma, W/o Narayana,

aged about 34 years, Member, M.P.T.C.,
R/o. G. Singavaram, Kurnool Mandal & District.

2. M. Nirmala, W/o Pedda Ayyapureddy,

aged about 41 years, Member, M.P.T.C.,
R/o. Nandanapalli, Kurnool Mandal & District.

3 K. Vijayudu, S/o Veeraiah,
aged about 36 years, Member, M.P.T.C.,

R/o Pasupula, Kurnool Mandal & District.

4 B. Maddamma, W/o Ramakrishna,
aged about 36 years, Member, M.P.T.C.,

R/o B. Thandrapadu, Kurnool Mandal & District.

5. B. Narasamma, W/o Pedda Rangaiah,

aged about 60 years, Member, M.P.T.C.,
R/o. Basavapuram, Kurnool Mandal & District.

6. B. Govindamma, W/o Boya Talari Pedda Mandakal,
aged about 45 years, Member, M.P.T.C.,

R/o. Multala, Kurnool Mandal & District.

7. M. Raghavareddy, S/o Raghuram Reddy,
aged about 46 years, Member, M.P.T.C.,

R/o Ramata, Kurnool Mandal & District.

8. P. Viswanathareddy, S/o Swamy Reddy,

aged about 47 years, Member, M.P.T.C.,

R/o. Gargeyapuram-I, Kurnool Mandal & District.

9. Chinna Nagaiah, S/o Chinna Naganna,
aged about 56 years, Member, M.P.T.C.,

R/o. Singuvapadu, Kurnool Mandal & District.

10. K. Eswaraiah, S/o Pedda Lakshmanna,
aged about 26 years, Member, M.P.T.C.,

R/o R. Konthalapadu, Kurnool District.

..... PETITIONERS

AND

1. The Revenue Divisional Officer/ Presiding Officer,

Kurnool, Kurnool District.

2. The State of A.P.,

Rep. by its Secretary, Panchayat Raj Department,
Secretariat Buildings, Hyderabad.

3. Sri M. Mani Gandhi, S/o Sikhamani,
Mandal Praja Parishad, Kurnool Mandal,

Kurnool District.

4. R. Lukaiah, S/o. Chinna John,

aged 48 years, S.C. Hindu,

R/o. Stantanpuram, M.P.T.C. Member,
Kurnool Rural Mandal, Kurnool District.

5. V. Jayasimha Reddy, S/o. Krishna Reddy,

aged 44 years, M.P.T.C. Member,

Panchalingala, Kurnool Rural, Kurnool District.

6. B. Venkata Naidu, S/o. Giddaiah,

age 30 years, M.P.T.C. Member,

Nidjuru, Kurnool Rural, Kurnool Mandal.

(Respondents 4 to 6 are impleaded vide Court Order dated 22.01.2004 in WPMP 1216/2004).

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction, more particularly one in the nature of Writ of Mandamus to declare Sub-Rules 6 and 7 of Rule 13 of The Andhra Pradesh Conduct of Election of Member (Co-opted) and President/Vice-President of Mandal Parishad and Member (Co-Opted) and Chairman/Vice-Chairman of Zilla Parishad Rules, 1994 issued in G.O.Ms.No. 756, PR, RD & R. Department, dated 30-11-1994, amended in G.O.Ms. No.81, PR, RD, dated 07-02-1995 as unconstitutional and unenforceable as they offend the Articles 14, 19 and 21 of the Constitution and consequently declare the orders in R.C. No.A/394/2003, dated 06-12-2003, passed by the 1st respondent, as illegal and un-constitutional.

W.P.M.P. No.6787 of 2004

IN

W.P. No.26282 of 2004

Between:

1 M. Anandamma, W/o Narayana,

aged about 34 years, Member, M.P.T.C.,
R/o. G. Singavaram, Kurnool Mandal & District.

2. M. Nirmala, W/o Pedda Ayyapureddy,

aged about 41 years, Member, M.P.T.C.,
R/o. Nandanapalli, Kurnool Mandal & District.

3 K. Vijayudu, S/o Veeraiah,
aged about 36 years, Member, M.P.T.C.,

R/o Pasupula, Kurnool Mandal & District.

4 B. Maddamma, W/o Ramakrishna,

aged about 36 years, Member, M.P.T.C.,

R/o B. Thandrapadu, Kurnool Mandal & District.

5. B. Narasamma, W/o Pedda Rangaiah,

aged about 60 years, Member, M.P.T.C.,
R/o. Basavapuram, Kurnool Mandal & District.

6. B. Govindamma, W/o Boya Talari Pedda Mandakal,
aged about 45 years, Member, M.P.T.C.,

R/o. Multala, Kurnool Mandal & District.

7. M. Raghavareddy, S/o Raghuram Reddy,
aged about 46 years, Member, M.P.T.C.,

R/o Ramata, Kurnool Mandal & District.

8. P. Viswanathareddy, S/o Swamy Reddy,
aged about 47 years, Member, M.P.T.C.,

R/o. Gargeyapuram-I, Kurnool Mandal & District.

9. Chinna Nagaiah, S/o Chinna Naganna,
aged about 56 years, Member, M.P.T.C.,

R/o. Singuvapadu, Kurnool Mandal & District.

10. K. Eswaraiah, S/o Pedda Lakshmanna,
aged about 26 years, Member, M.P.T.C.,

R/o R. Konthalapadu, Kurnool District.

..... Petitioners

AND

1. The Revenue Divisional Officer/ Presiding Officer,

Kurnool, Kurnool District.

2. The State of A.P.,

Rep. by its Secretary, Panchayat Raj Department,
Secretariat Buildings, Hyderabad.

3. Sri M. Mani Gandhi, S/o Sikhamani,
Mandal Praja Parishad, Kurnool Mandal,

Kurnool District.

.. Respondents

For the reasons stated in the affidavit filed herein, the High Court may be pleased to raise the following additional grounds:

i. The proviso to under Section 153 of the A.P. Panchayat Raj Act which is penally in nature cannot be enforced as the State Legislature has not provided the statutory authority for referring the question of dis-qualification and the manner in which it has to be decided by the said statutory authority;

ii. Article 243F(2) is mandatory and as the State Legislature of the State has not provided the Statutory Authority the 1st respondent has no jurisdiction to pass the impugned order.

Counsel for the Petitioners in W.P. & W.P.M.P: Sri E.AYYAPU REDDY

Counsel for the Respondents 1 & 2 in W.P. & W.P.M.P: ADVOCATE GENERAL

Counsel for Respondent No.3 in W.P. & W.P.M.P.: Sri C.V. Mohan eddy.

Counsel for the Respondents 4 to 6 in W.P.: Sri N. Subba Reddy

The Court made the following :

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ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

Shorn of all the details, the only question that falls for our consideration in this writ petition is as to whether the Proceedings in R.C.No.A/394/2003, dated 06-12-2003, passed by the 1st respondent-Revenue Divisional Officer, Kurnool, declaring that the petitioners have ceased to hold office of the Member of Mandal Parishad suffer from any legal or constitutional infirmity?

In order to appreciate the question as to the validity of the impugned proceedings, few relevant facts leading to filing of this writ petition may have to be noticed.

The facts are tell-tale depicting in vivid details, the extent of degeneration crept into local self-governing institutions. The local self-Government units have become play-fields where political games are played with the sole motive of capturing elected offices. Democratic norms and Rule of law are thrown to wind.

FACTS IN BRIEF:

That the elections were held for Kurnool Mandal Parishad on 15th July, 2001. Out of 19 Mandal Parishad Territorial Constituencies for which elections were held, all the petitioners 10 in number and the 3rd respondent were elected from the respective Mandal Parishad Territorial Constituency on behalf of Congress

Party. There were only

5 members elected from Telugu Desham Party. One person was elected as an Independent candidate. Two members were elected from Communist Party (Marxist). The 3rd respondent was elected as President of Mandal Parishad, Kurnool. It is however alleged that the 3rd respondent got himself elected with the support of Telugu Desham Party members and one Independent candidate.

Be it as it may, petitioner Nos. 1, 4, 5, 6, 7, 8 and 10 were disqualified from the membership of Mandal Parishad on the ground that they have violated the whip issued by the Congress Party and voted against the 3rd respondent in the presidential election. Further details in this regard need not be noticed in detail except to note that the order of

dis-qualification was set aside by this Court in W.P.No. 20346 of 2001.

It is evident from the averments made in the affidavit and counter-affidavit that the entire Mandal Parishad was divided into two groups cutting across the party lines. One Vijayasimha Reddy belonging to Telugu Desham Party was elected as Vice-President of Mandal Parishad even though the Telugu Desham Party had only 5 members in the Mandal Parishad. There were many twists and turns in the process of internecine war between two groups cutting across the party lines. The said Vijayasimha Reddy who was elected as Vice-President of the Mandal Parishad initially with the help of the 3rd respondent took initiation and proposed a

No-confidence motion against the 3rd respondent, in which he was supported

by all the petitioners. The 1st respondent convened a meeting on 22-10-2003 to consider the

No-confidence motion moved against the 3rd respondent. The Vice-President, Sri Vijayasimha Reddy, for whatever reasons, had submitted his resignation as Vice-President after issuance of notice of No-confidence on 1-10-2003. The said resignation was accepted even before No-confidence motion was put to vote. The No-confidence motion moved against the 3rd respondent was passed on 22-10-2003. The facts speak for themselves.

That in the vacancy caused by the resignation of the said Vijayasimha Reddy, a meeting was convened to be held on 05-11-2003 to fill up the casual vacancy of the

Vice-President. The meeting could not be held for want of quorum and was adjourned to 29-11-2003. The

10th petitioner was elected as Vice-President in that meeting held on 29-11-2003 by a majority of 13 against 6 votes. It is a different matter altogether that the 10th petitioner submitted his resignation on 03-12-2003 itself, in protest against the alleged undemocratic and autocratic attitude of the

3rd respondent, for the 3rd respondent did not resign in spite of losing confidence of the Mandal Parishad. It is in that meeting held on 29-11-2003 the petitioners are alleged to have incurred disqualification on the ground of their

voting contrary to the whip issued by the Party Whip.

Strictly speaking, these events may not have any bearing upon the question that falls for our consideration, namely, as to the validity of the impugned order passed by the 1st respondent-Revenue Divisional Officer disqualifying the petitioners herein from being continued as members of the Mandal Parishad. We have noted them to highlight as to how the local bodies have ceased to function as the units of
self-government. They have become play-fields for playing nefarious power games by the unscrupulous elements without any regard whatsoever to the electorate by whom they were elected.

The Constitution (73rd Amendment) Act, 1992 came into force on 24-4-1992 to give effect to one of the Directive Principles of State Policy, viz; Article 40 of the Constitution of India, which directs the State to organise village panchayats as units of self-Government. The units of local
self-Government are envisaged as the base democratic institutions of a pyramid of the democratically organised and functioning self-governing units. These institutions were created with a noble idea to make them as social, political and economical entities and ultimately shape them as democratic, political and administrative units. They unfortunately became the victims in the hands of powerful virtually defeating the very laudable object for which they were created and brought into existence. Constitutional provisions are subverted with impunity.

We shall now notice the crux of the controversy:

The 1st respondent-Revenue Divisional Officer issued a notice dated 2-12-2003 to the petitioners herein requiring them to show cause as to why they should not be disqualified from being continued as members of the Mandal Parishad under

Section 153 of the A.P. Panchayat Raj Act, 1994 (Act 13 of 1994) (for short 'the Act') read with A.P. Conduct of Election of Member (Co.opted) and President/Vice President of Mandal Parishad and Members (Co.opted) and Chairman/

Vice-Chriaman of Zilla Parishad Rules, 1994 (for short 'the Rules') for violating the whip and the directions issued on behalf of the Congress party in the matter of voting in the elections of Vice-President of Mandal Parishad, Kurnool. The petitioners submitted their explanation on 15-12-2003 *inter alia* denying the allegations levelled against them. The sum and substance of their explanation is that they have no knowledge about the whip issued by the Congress party; they have not received any communication till the time of special meeting of Mandal Parishad held on 29-11-2003 convened to elect the Vice-President. The Presiding Officer, having considered the objections of the petitioners and the entire material available on record, found that the party Whip has affixed the copy of the contents of the whip issued by him on the doors of the respective houses of the petitioners and a copy thereof was submitted to the Presiding Officer one-hour before the special meeting held on 05-11-2003 as well as on 29-11-2003 as is required in law. Further, the whip issued by the 3rd respondent

appointed by the Congress party requiring all the members of the party to attend the meeting to be held on 05-11-2003 and to cast their votes in favour of one G. Naganna who was in the fray for the post of Vice-President on behalf of the party has been published in Andhra Jyothi, Andhra Bhoomi and Eenadu daily newspapers, dated 04-11-2003 as well as District Editions of 'Vaartha and Andhra Bhoomi' daily newspapers, dated 28-11-2003, much before the meeting that was held on 29-11-2003. The 1st respondent, accordingly, declared the petitioners herein have incurred disqualification under Section 153 of the Act.

Sri E. Ayyapu Reddy, learned counsel for the petitioners, *inter alia,* submitted that the impugned order suffers from non-application of mind for the 1st respondent passed the order in a very casual and mechanical manner without adverting to any of the contentions raised by the petitioners in their reply submitted to the show-cause notice issued requiring them to submit their explanations. The learned counsel further submitted that a copy of the contents of the whip and the directions requiring them to vote in favour of the candidate set up by the party was not served upon the petitioners nor the same was made available to the presiding officer atleast one-hour before commencement of the special meeting as is required in law. This infirmity, according to the learned counsel, itself is enough to declare the impugned proceedings void and inoperative.

That an application has been filed to raise the following additional grounds:

i. The proviso to Section 153 of the A.P. Panchayat Raj Act which is penal in nature cannot be enforced as the State Legislature has not provided the statutory authority for referring the question of disqualification and the manner in which it has to be decided by the said statutory authority;

ii. Article 243-F(2) is mandatory and as the State Legislature of the State has not provided the statutory authority, the 1st respondent has no jurisdiction to pass the impugned order.

Sri N. Subba Reddy, learned counsel for respondent Nos. 4 to 6, while adopting the submissions made by

Sri Ayyapu Reddy, further submitted that service of notice by way of publication in the newspapers is not enough. Notice must be served on each member as is required in law. Reliance is placed on the decision of a Division Bench of this Court in **S. Jyothi v. Presiding Officer/Election Officer.** In the instant case, according to the learned counsel, there is no proof of service of whip on any of the members as is required in law. The Presiding Officer is duty bound to announce, before commencement of the proceedings, that the Whip has furnished a copy of the contents of the whip issued by him and the same was duly served upon the members of the political party requiring them to vote in favour of the candidate set up by the political party concerned.

The learned Advocate General, appearing on behalf of the 1st respondent, submitted that personal service of the whip on each of the

members is not the requirement in law and the same cannot be insisted upon. Knowledge of the contents of the whip issued by the party Whip would be enough. In the instant case, the contents of the whip were published in the leading newspapers much before the special meeting was convened and each of the members had the knowledge about the whip issued by the party and each one of them is bound to comply with the same and

non-compliance thereof results in automatic disqualification of all those members who defied the whip and the directions and voted contrary to the whip.

Sri C.V. Mohan Reddy, learned counsel for the

3rd respondent, submitted that no particular mode of service of contents of whip has been provided for in law and what is required is service of contents of the whip and the directions issued requiring the members to vote in favour of the candidate set up by the political party concerned. Knowledge of contents of the whip issued by the Whip appointed by the political party concerned is enough requiring the members of the political party concerned to follow the directions and vote in favour of the candidate set up by the political party concerned; failure to comply with the whip and the directions issued, results in automatic disqualification of such of those members who are found to have defied the whip and the directions issued by the party. The rules and the instructions issued by the Election Commission do not provide for any particular mode of service, and therefore, it cannot be insisted that each of the members should be served with the contents of the whip individually. The questions that are required to be considered according to the learned counsel are;

(1) whether there was sufficient service of notice of contents of the whip and

the directions issued by the Whip ? and

(2) whether the principles of natural justice have been complied with ?

It was further submitted that the Whip appointed by the political party concerned cannot be saddled with the responsibility of performing an impossible task of service of notice on each of the members which may not be practicable more particularly in a situation where the members may not be available or unwilling to receive the notices.

We have given our careful consideration to the submissions made during the course of hearing of this writ petition.

In order to appreciate the submissions, it is just and necessary to notice the relevant provisions of law as well as the instructions issued by the State Election Commission.

Section 153 of the Act, which deals with election, reservation and term of office of President and Vice-President reads:

> "**Section 153. Election, reservation and term of office of President and Vice-President:-**
>
> (1) For every Mandal Parishad there shall be one President and one Vice-President who shall be elected by and from among the elected members specified in clause (i) of sub-sec. (1) of Sec.149 by show of hands duly obeying the party whip given by such functionary of the recognised political party as may be prescribed. If at an election held for the purpose no President or Vice-President is elected, fresh election shall be held. The names of the President and the Vice-President so elected shall be published in the prescribed manner:

Provided that if a Member of the Legislative Assembly of the State or of either House of Parliament is elected to either of the said offices, he shall cease to hold such office unless within fifteen days from the date of election to such office, he ceases to be a Member of the Legislative Assembly of the State or of either House of Parliament by resignation or otherwise.

Provided further that a member voting under this sub-section in disobedience of the party whip shall cease to hold office forthwith and the vacancy caused by such cessation shall be filled as a casual vacancy.

(2) .....

a. .....

b. .....

c. .....

d. .....

(2A) .....

(3) .....

(4) .....

(5) .....

(6) .....”

Part - IV of the Rules containing Rules 11 to 14 deal with the Election of President/Vice-President of Mandal Parishad. Rule 13 of the Rules, in particular, provides for procedure and the manner of conduct of meeting by the Presiding Officer specially convened for conduct of election of President/Vice-President of a Mandal Parishad.

Rule 13 of the Rules so far as relevant for our present purpose reads:

> **13.**(1) A candidate for the office of the President/Vice-President of a Mandal Parishad shall be proposed by one member and seconded by another. The names of all the candidates validly proposed and also seconded shall be read out by the Presiding Officer at such meeting.
>
> A candidate for the Office of President/Vice-President of a Mandal Parishad shall be proposed by one member and seconded by another. If any candidate claims to be contesting on behalf of a political party, he shall produce an authorisation from the President of the recognised political party of the State or a person duly authorised by the
> State President under his office seal and such
>
> authorisation shall be produced before the Presiding Officer on or before 10.00 A.M. on the day of the election for the election of the Office of President/Vice-President of Mandal Parishad.
>
> The names of all candidates validly proposed and seconded shall be read out along with the name of the Political Party which has set him up by the Presiding Officer in such a meeting.

2. ……

3. ……

4. ……

5. ……

6. Every recognised political party may appoint on behalf of that political party a whip and intimation of such

appointment shall be issued by the State President or a person authorised by him under his seal and such intimation shall be sent to the Presiding Officer to reach him on or before 11.00 A.M. on the day preceding the day of election to the Office of the President/Vice-President of the Mandal Parishad.

Explanation **:-** Recognised political party means a political party recognised by Election Commission of India, New Delhi.

(7)(i) Any member of the Mandal Parishad elected on behalf of a recognised political party shall cease to be a Member of the Mandal Parishad for disobeying the directions of the Party Whip so issued.

(ii) The Presiding Officer shall, on receipt of a written report from the party Whip within three days of the election, that a Member belonging to his party has disobeyed the Whip issued in connection with the election forthwith declare in Form V-C that the Member has ceased to hold Office and the decision of the Presiding Officer shall be final."

Part - V of the Rules makes the same procedure referred to hereinabove contained in Part - IV of the Rules applicable for filling up a casual vacancy in the office of President/Vice-President of the Mandal Parishad.

The State Election Commission in purported exercise of its power under Section 201 of the Act issued instructions with regard to procedure to be followed in holding special meeting for election of Chairman/Vice-Chairman and Co-opted members of Zilla Parishads and President/Vice President and Co-opted members of Mandal Parishads vide Circular No.853/SEC/B1/2001-3, dated 19-07-2001. The said instructions require to be followed by all the

Presiding Officers *inter alia* declare that the appointment of Whip is valid only if the State President or a person authorised by him intimates the name of the Whip to the Presiding Officer before 11.00 a.m., on the day preceding the day of election. If a person who is not a member of the house is appointed as whip, he will not be permitted to participate in the meeting. The political parties are required to appoint only one Whip for election to a particular body. The provisions pertaining to whip are applicable only to the members of Mandal Parishads/Zilla Parishads elected on behalf of a recognised political party. The said provisions do not apply to the members elected on behalf of other political parties and to the independent candidates.

Sri E. Ayyapu Reddy, learned counsel for the petitioners, as well as Sri N. Subba Reddy, learned counsel appearing for respondents 4 to 6, have placed heavy reliance upon the judgment of this Court in **Pandranki Parvathi & Others v. Akula Gangaraju & Others** in support of their submission that service of contents of the whip issued by the Whip appointed by the party, on each of the individual member is a *sign qua non* and only in such cases the disqualification on the ground of disobedience of the Party Whip under Section 153 of the Act may become applicable for initiating action against those members casting votes in disobedience of the Party Whip. This Court while interpreting Section 153 of the Act and the Rules as well as the instructions of the State Election Commission referred to hereinabove, observed:

> "The instructions further provide that any member of Mandal Parishad/Zilla Parishad elected on behalf of a recognised political party, if casts vote in disobedience of the Party Whip so issued, he ceases to be Member of Mandal Parishad/Zilla Parishad, as the case may be.

It is thus clear that the whip appointed by a recognised political party is under mandatory obligation to furnish a copy of the contents of the whip issued by him to the Presiding Officer one hour before the commencement of the special meeting. The contents of the whip and directions to be issued are provided for in Annexure-II referred to hereinabove, which is to the following effect:

ANNEXURE – II

PARTY WHIP

I, …… appointed as whip of …… party for elections to Chairman/Vice-Chairman, President/Vice-President of …….... Zilla Parishad/Mandal Parishad …… District, hereby, direct that the elected members of the Zilla Parishad/Mandal Parishad belonging to …… Party shall be present in the special meeting to be held on …… and vote in favour of ……. candidate.

Party Seal

Signature and Name

Authorised Party Whip

Date:

Place:

To

Sri ……

Member, ……ZP/MP,

Copy to the Presiding Officer, ……
…… ZP/MP Special Meeting.

A fair reading of Section 153 of the Act and the Rules referred to hereinabove together with the instructions of the Election Commission clearly reveals that the whip, if any, appointed by a recognised political party is to serve a copy of the contents of whip and directions to every member of such political party requiring them to vote in favour of the candidate set up by the said party. The same must be duly sent and served upon the elected member of such political party and a copy of the same must be made available to the Presiding Officer at least one hour before the commencement of the special meeting *i.e.,* by 12.00 Noon. Such a procedure, obviously, has been devised in order to prevent any subsequent manipulations by the political parties or whips appointed by them to disqualify the members of the elected bodies according to ones own whims and fancies. The duty to declare that a member of the Mandal Parishad elected on behalf of a recognised political party ceases to be a member of the Mandal Parishad for disobeying the directions of the party whip is cast on the Presiding Officer. It would be in fitness of things that the Presiding Officer should have advance intimation as to the nature of the directions issued by the whip and contents thereof and also the details of the candidates set up by the recognised political parties, which would enable him to go into the question whether any member of the Mandal Parishad elected on behalf of a recognised party had disobeyed the directions of the party whip and thereby incurred disqualification.

Likewise, every member of the Mandal Parishad elected on behalf of a recognised political party is required to be put on advance notice as to the details of the candidates set up by such party for the Presidentship/Vice-Presidentship of the Parishad and the directions, if any, on behalf of the party for being present in the special meeting and to vote in favour of the candidates set up by such political party. It is, therefore, a mandatory requirement in law that a copy of the whip containing the contents and directions must be served upon the member of the Zilla Parishad/Mandal Parishad, as the case may be. Annexure-II appended to the instructions issued by the Election Commission referred to hereinabove provides for such service of contents of the party whip and a copy thereof to be made available to the Presiding Officer of the special meeting."

In our considered opinion, the ratio of the decision and the observations made in the case have no application and really do not have any bearing on the issue that arises for consideration in the instant case.

I n **Pandranki Parvathi's case (2 Supra)** the special meeting to elect the President as well as the Vice-President of the Mandal Parishad was convened to be held on 22-7-2001 at 1-00 P.M. The Whip appointed on behalf of the Congress party made available a copy of the whip issued by him to eight members of the Congress party requiring them to vote in favour of the candidates set up by the party after the special meeting was assembled at 1-00 p.m.; it is at that stage, the Whip has taken permission from the Presiding Officer to serve the whip to the members of the Congress party who refused to receive the party whip stating that they had already resigned from the party and that they are independent members as on the said date. It was a case where the Whip in clear and categorical terms admitted that he tried to serve the copies of the Whip "just before commencement of the meeting for electing office bearers at 1.00 p.m." It was a clear case where the prescribed procedure of serving a copy of the contents of the whip and the directions to every member of the political party requiring them to vote in favour of the candidates set up by the said party was not followed. The instructions of the State Election Commission clearly provide that a Whip appointed by a recognised political party has to furnish a copy of the contents of the whip issued by him to the Presiding Officer atleast one hour before the commencement of the special meeting *i.e.* by 12.00 noon. It means that the Whip appointed by a recognised political party is under mandatory obligation to serve a copy of the contents of the whip and the directions to every member of such political party requiring them to vote in favour of the candidate set up by the party well in advance and the same must be made available to the Presiding Officer atleast one hour

before the commencement of the special meeting. It means that the contents of the whip must be served on the members of such political party requiring them to vote in a particular manner, before
12.00 noon, and a copy thereof must be made available to the Presiding Officer by 12.00 noon on the day when the special meeting is convened. This decision is not an authority as to the mode of service of notice, it is an authority for the proposition that the instructions issued by the State Election Commission are of binding nature required to be followed and form an integral part of election process and the instructions prescribe the mode and method of issuing Party Whip upon the members who are required to comply with the whip and to be followed by all the concerned.

The question that falls for consideration in the instant case is, what is the procedure to be followed for actual service of a copy of the contents of the whip by the Whip appointed by a recognised political party requiring its members to vote in favour of the candidate set up by the said party ?

The Rules and the instructions issued by the State Election Commission are silent in this regard. They do not provide for any particular mode or procedure of service of a copy of the contents of the party whip by the Whip appointed by a recognised political party and how to serve a copy of the contents of a whip and the directions upon the members who are unwilling, for whatever reason, to receive the same.

There could be variety of circumstances and reasons for which the member/members of a political party with a view to defy the Whip may not

acknowledge the copy of the Whip even if the same is sought to be served on them. The Whip appointed by a recognised political party cannot be asked to perform an impossible duty of serving a copy of the contents of the whip and the directions upon the members of such political party who, for whatever reason, may be unwilling to receive the same. In this very case, it is alleged that the contents of the whip could not be served personally upon each of the petitioners since all of them were kept captive in a camp by a local leader. In the affidavit filed by the Whip, it is stated that he tried to serve the copies of the whip on the petitioners but they were not available at their residence, as they were kept captive in a camp. It is under those circumstances, the Whip got pasted copies of the whip on the respective houses of the petitioners and took the signatures of the villagers in acknowledgement of the said act. That as an abundant precaution, the contents of the whip were got published prominently in the local editions of Andhra Bhoomi and Vaartha (Telugu dailies), dated 28-11-2003. In the said publication itself, it is mentioned that the petitioners were not available at their residence and the Whip was compelled to issue the paper notification.

In our considered opinion, it is a clear case where the performance of the formalities, even if any, prescribed by the State Election Commissioner's instructions has been rendered impossible by circumstances over which the person who is required the performance of formality had no control.

It is a clear case where the maxims of *law impotentia excusat legem* and the *law lex cogit ad impossibilia* are applicable. The scope of the maxims is explained by the Supreme Court in **Election Commission, In RE: Special Reference No.1 of 2002:**

> "The maxim of *law impotentia excusat legem* is intimately connected with another maxim of *law lex non cogit ad impossibilia. Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See *Broom's Legal Maxims,* 10th Edition, at pp.1962-63 and *Craies on Statute Law,*
> 6th Edn., p. 268.) These aspects were highlighted by this Court in Special Reference No.1 of 1974. Situations may be created by interested persons to see that elections do not take place and the caretaker Government continues in office. This certainly would be against the scheme of the Constitution and the basis structure to that extent shall be corroded."

The averments made in the affidavit filed by the

3rd respondent/Party Whip that a notification containing the contents of the Party Whip issued and the directions to the members of the Congress party to vote in a particular manner and support the candidature set up by the party has been published in the leading local Telugu daily newspapers is not disputed. That apart, there is a clear finding in the proceedings of the 1st respondent/Revenue Divisional Officer/Presiding Officer that such a publication has been made in the local Telugu daily newspapers and all the petitioners had the knowledge of the contents of the Party Whip.

That all possible steps have been taken by the Whip to serve the contents of the whip issued by him upon the petitioners and each one of them was bound to comply with the same. Be it noted, substituted service of notice is well recognised even by the Code of Civil Procedure as an effective mode of service of notice. The Whip appointed by any recognised political party cannot be expected and compelled to perform duty which cannot possibly be performed for reasons beyond one's control. It would be impossible to serve notice in person upon unwilling members to receive and accept the notice of contents of the whip for their own reasons. In the circumstances, it is not possible to hold that the Whip appointed by the recognised political party is under any legal obligation to serve the contents of the whip and the directions issued on each member of such political party in person. Imposition of any such obligation may amount to requiring a person to perform an act, which is otherwise impossible by circumstances over which the person entrusted with the duty had no control. All such circumstances shall be taken as a valid excuse.

What is the object of giving a notice ?

This issue came up for consideration in **Rai Vimal Krishna & Others v. State of Bihar & Others,** wherein the Supreme Court observed, "generally speaking, the object of giving a notice is to draw the attention of the persons sought to be affected to the matter notified."

The Supreme Court while interpreting Section 149 of Patna Municipal Corporation Act, 1951, which prescribed

the procedure for publication of notice of assessment by beat of drum and by

placards posted in conspicuous places through out Patna or any part of Patna has been assessed, observed that mode of publication is a procedural one. The Supreme Court further observed:

> "Generally speaking, the object of giving a notice is to draw the attention of the persons sought to be affected to the matter notified. The purpose of specifying a particular mode of giving notice is to raise a legal presumption against such person, of knowledge of the subject of the notice. In other words, once the mode specified for giving notice is complied with, the onus is on the persons notified to prove that they were not aware of the subject-matter of the notice. There is otherwise no special sanctity given to the mode of service of notice. The appellants have contended that even though owners were served with individual notices under Section 149(2), unless publication was made in the manner provided in Section 149(1) the occupants who were liable to pay water tax and latrine tax would be seriously affected and would not have an opportunity of challenging the imposition of the tax on them. Incidentally, in the objections filed by the appellants their contention is that the holdings owned by them were not liable to payment of latrine tax or water tax because neither of the services were available. However, the matter has to be decided as a principle and not with reference to the appellants' case.
>
> Nobody disputes that publication and the giving of notice to persons likely to be affected by the assessment list is a must. The appellants have admitted publication of the assessment lists in three newspapers. It is not their case that such publication did not serve the purpose of notifying those who might be affected by the assessment lists, of their existence. Indeed it appears to us that the requirement to notify people by beat of drum is an anachronism which appears to be inappropriate in the present day and age in a large city like Patna……It is an elementary principle of interpretation that words in statutory provisions take their colour from their context and object, keeping pace with the time when the word is being construed. When or where no other means of effective publication is available, no doubt, announcing the assessment list by beat of drum and by displaying placards would have to be complied with. Where equally efficacious, if not better, modes of publication are available, it would be ridiculous to insist on an obsolete form of publication as if it were a ritual."

This Court in W.A. 29 of 2004, dated 23-02-2004, while interpreting Section 21(2) of the same Act which requires the District Panchayat Officer to intimate the fact that a person incurred disqualification specified under Clause (b) of Section 20 of the Act and has ceased to be a member, by a registered post to the member concerned observed:

> "Sending of notices is mandatory. But the mode of service is a procedural one as seen from Sec.21 (2) of the Act 1994. "Once the requirement of giving notice is complied with, it cannot be said that particular mode as provided under the Act is not complied with. When no other means of effective service are available, sending the notice by registered post would have to be complied with. Where equally efficacious, if not better, mode of serving notice through special messenger is available, it would be imprudent to insist on an obsolete form of service as if it were a ritual." Since there has been a substantial compliance in serving the notices on respondents 5 to 14 through special messenger, which fact was admitted by respondents 5 to 14 in their counter affidavit, we cannot hold that the mode of serving the said notice is contrary to Section 21(2) of the Act 1994."
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In the case on hand, neither the statute nor the Rules framed thereunder provide for service of a copy of the contents of the whip upon the members of the political party concerned by the Whip, if any, appointed by a recognised political party. It is the Election Commission, which issued instructions making it obligatory on the part of the Whip appointed, requiring him to furnish a copy of the contents of the whip issued by him to the Presiding Officer atleast one hour before the commencement of the special meeting. In our considered opinion, what is required is to serve a copy of the contents of the whip issued by him

upon the members for which purpose no particular procedure is prescribed. This issue has to be examined from the standpoint of substantial compliance; that unless prejudice has been caused by
non-service of notice of contents of the whip on every individual member, the action for publication of contents of the whip in the newspapers would be sustained.

A Division Bench of this Court in **Madhava Rao Desai v. Union of India & Others,** it is *inter alia* held "in our view, independent of the declaration made by the Election Officer about the whip issued by the party, the petitioner is entitled to be served with the same through his party prior to the commencement of the election process. There is no indication from the order of the Election Officer that such a whip had been served on him. Even the petitioner had not been given any opportunity to substantiate his claim that the same was not served on him. In this view of the matter, we are of the view that the impugned declaration of the Election Officer in Form V-C cannot be sustained."

This judgment, in our considered opinion, is again an authority for the proposition that every member is entitled to be served with the copy of the contents of the whip. That every member must be made known that a whip containing the directions as to in what manner the members are required to exercise their voting right and comply with the same, since the failure results in disqualification from the membership of the Parishad. The case is not an authority for the proposition that a notice must be served on every member in person by the Whip appointed by a recognised political party. Further, it was a case where no opportunity was given to substantiate the claim that the contents of the whip were not served upon him. It is under those circumstances, the

proceedings disqualifying a person from the membership of the Parishad has been quashed.

In **S. Jyothi's case (1 Supra)** this Court took the view that the provisions of sub-rule (6) of Rule 13 of the Rules are mandatory in nature. Further, under Rule 13(6), Whips should be appointed by political party only and intimation of that appointment may be communicated to the Presiding Officer either by the State President or any other person authorised by him under his seal. In that case, no evidence was produced to show that the appointment of Party Whip was made by the political party to which they belong. As a matter of fact, it was found that no notice of intimation of appointment of Whip was served on the writ petitioners; *secondly*, there was no evidence to show that before commencement of the election, the members were aware of the notice of whip published in the news paper; *thirdly*, there was nothing on record to show that the Whip has attempted to serve notice on the petitioners therein and they refused to receive the same. It is under those circumstances, the Court observed, "burden of proof placed on the respondents is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving the criminal or quasi-criminal charge. Clear-cut evidence,
wholly credible and reliable is needed to prove the disobedience of the Whip despite service of intimation of the Whip.....a member of Mandal Parishad cannot be disqualified for the alleged disobedience of the Whip lightly and in the absence of clear-cut and satisfactory substantive evidence to show that he has disobeyed the Whip." This judgment, once again, is not an authority for the proposition as to the mode of service of notice. Further, as a matter of fact, it was found that the members were not even aware of publication of contents of the Whip in the newspaper.

In the instant case, there is no dispute whatsoever that Rule 13(6) of the Rules has been complied with, since the political party concerned sent the required intimation about the 3rd respondent's appointment as Party Whip and the intimation has reached the Presiding Officer on the day preceding the day of election. There is no dispute that the contents of the whip issued by the 3rd respondent requiring the petitioners to vote in favour of the candidate set up by the party has been published in the local Telugu daily newspapers, dated 28-11-2003, much before the special meeting was convened for the purpose of electing the

Vice-President of the Parishad. There is a clear and categorical finding that the petitioners are aware of the publication of the contents of the whip issued twice in the local Telugu daily newspapers mentioning the names of the petitioners and the same would amount to receipt/knowledge of the whip issued by the party prior to the special meeting held on 29-11-2003. The Presiding Officer read over and explained to all the members who attended the meeting held on 29-11-2003 about B-Form issued by the Indian National Congress party in favour of G. Naganna for the election of Mandal Vice Presidentship and the whip issued by the 3rd respondent requiring the petitioners to vote in favour of said Naganna.

In such view of the matter, we hold that the impugned order does not suffer from any error apparent on the face of it nor does it suffer from any non-application of mind. The service of notice of contents of the whip by publishing the same in local Telugu daily newspapers is a substantial compliance. The contentions urged are accordingly rejected.

Additional ground attacking the Constitutional validity of Rule 13(7) of the Rules:

Whether Rule 13(7)(ii) of the Rules which enables the Presiding Officer to declare in Form V-C that a member has ceased to hold office on the ground of disobeying the whip issued by the Whip is unconstitutional ?

Sri E. Ayyapu Reddy, learned counsel for the petitioners, relying upon Article 243 (F) of the Constitution of India submitted that the questions as to whether a member of a Panchayat has become subject to any of the disqualifications can be decided only by an authority as provided by law made by the legislature of a State and not by the rule making authority. The submission was that the rule making authority cannot constitute or create a Forum for deciding the questions whether a member of a Panchayat has become subject to any of the disqualifications and that the law in that regard can only be made by the legislature of a State.

It is true that there is no Forum, as such, constituted under the Act, for resolution of any dispute about any member becoming disqualification as provided for under proviso to Section 153 of the Act.

Section 22 of the Act, which deals with authority to decide questions of disqualification of members says that where the allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 or where any member himself entertains any doubt whether, or not he has become

disqualified under any of those Sections, such member or any other member may apply to the District Court having jurisdiction over the area in which office of the Gram Panchayat is situated for decision. Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

Section 22 of the Act does not deal with the disputes, if any, arising under Section 153(2) of the Act. There is no Forum, as such, for resolving the disputes, if any, arising about the disqualification of a member on the ground of voting in disobedience of the Party Whip. The authority, Forum, can be created and constituted only by the legislature of a State as provided for under Article 243(F) of the Constitution of India.

But the question that falls for consideration is whether the rule making authority had constituted the Presiding Officer as an authority for resolution of the disputes relating to disqualification of members on the ground of disobedience of the Whip?

Rule 13(7)(i) read with Section 153 of the Act makes it abundantly clear that a member voting in disobedience of the Party Whip shall cease to hold office forthwith for disobeying the directions of the Party Whip so issued. The Presiding Officer shall, immediately, on receipt of a written report from the Party Whip within three days of the election, that a member belonging to his party has disobeyed the Whip issued in connection with the election forthwith declare that the member has ceased to hold office. The declaration so made by the Presiding Officer is final. The Presiding Officer is neither an authority nor a Forum created for the purposes of resolution of the disputes, if any, raised by the members incurring such disqualification. Therefore, it cannot be said that

instead of the State Legislature by law, the rule making authority created and constituted the Presiding Officer of the meeting as an authority for resolution of the disputes relating to disqualification of a member of Mandal Parishad for disobeying the directions of the Party Whip. The Presiding Officer merely declares in Form V-C that a member has ceased to hold office and such declaration is always based only on a receipt of a written report from the Party Whip that a member belonging to his party disobeyed the Party Whip issued in connection with the election. The Presiding Officer merely performs a ministerial act of declaration of a fact.

This Court in **M. Mohan Rao v. Revenue Divisional Officer** observed that:

> "The disputes that may arise within
> the frame work of the proviso to Rule 8 may
> be very limited in scope and elaborate
> enquiry is not required or contemplated.
> "At the same time, when disputes do arise in that limited sphere, there must be some procedure or machinery to deal with such disputes, atleast in a summary way. Providing an opportunity to the affected person to espouse his grievance before a designated authority before disqualifying the member from continuing in Office, will not only be in consonance with the principles of natural justice, but would also be necessary to cater to the mandatory requirement of Clause (2) of Article 243-F……Viewed in this perspective, we have no reason to exclude the operation of principles of natural justice to the minimal extent necessary before declaring that a person ceases to hold the elective Office by reason of infringement contemplated by Rule 8." *(Emphasis is of ours)*

Thus what is required is that before issuing Form V-C, an opportunity of making

representation should be afforded to the affected person and the representation should be examined, may be in a summary way, and then declaration should be made. Such steps will ensure the compliance with the principles of natural justice.

The scope of enquiry is very limited and an elaborate enquiry as held in **M. Mohan Rao's case** (6 Supra) is not contemplated. It is a summary enquiry. The Presiding Officer is, therefore, not entitled to adjudicate and resolve any serious dispute that may arise between the Party Whip and the members unlike the authority as provided for under Section 22 of the Act to resolve the disputes about the disqualification of a member under Sections 17, 18, 19 and 20 of the Act. The Rule, therefore, does not suffer from any constitutional infirmity.

We are in agreement of the submission made by the learned counsel for the petitioners that there is a need to create and constitute an authority for resolution of the disputes, if any, arising out of the allegations of disqualification of a member of a Mandal Parishad for disobeying the directions of the Party Whip. We cannot issue any direction to the Legislature to make any law in this regard. We can only invite the attention of the Executive as to the need of creating and constituting a Forum for resolution of the disputes and remind its duty to take initiative to provide and make appropriate amendments to the provisions of the existing Act. It is for the Government to take appropriate measures in this regard.

No other point is urged.

For the aforesaid reasons, we find no merit in the writ petition and the same shall accordingly stand dismissed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:18th January, 2005.

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C.V. RAMULU, J

NOTE:

1) Mark copy of this order to the Chief Secretary and the Principal Secretary, Panchayat Raj Department, Government of Andhra Pradesh.

2) L.R. Copy to be marked.

(B/O)

GRR/**PV**

To

1. One Fair copy to the Hon'ble Sri Justice B. Sudershan Reddy.

2. One Fair copy to the Hon'ble Sri Justice C.V. Ramulu.

3. The Under Secretary,
Government of India, New Delhi.

4. The Revenue Divisional Officer/ Presiding Officer,

Kurnool, Kurnool District.

5. The Chief Secretary, Government of A.P.,
Secretariat Buildings, Hyderabad.

6. The Secretary, State of A.P.,

Panchayat Raj Department,

Secretariat Buildings, Hyderabad.

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